



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

**[WC Docket No. 11-42; DA 13-1441]**

Lifeline and Link Up Modernization and Reform

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Order, the Wireline Competition Bureau (Bureau) underscores certain compliance requirements that are contained in the Lifeline Reform Order and its accompanying rules. The Bureau codifies the Commission's requirement that eligible telecommunications carriers (ETCs) verify a Lifeline subscriber's eligibility for Lifeline service before activating such service, pursuant to the authority delegated in the Lifeline Reform Order.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Radhika Karmarkar, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Wireline Competition Bureau's Order in WC Docket No. 11-42; DA 13-1441, released on June 25, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc.

(BCPI), 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's web site at: <http://www.fcc.gov/document/order-codifying-requirement-verify-lifeline-subscriber-eligibility>.

## **I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau) underscores certain compliance requirements that are contained in the Lifeline Reform Order, 77 FR 12952, March 2, 2012, and its accompanying rules. The Bureau codifies the Commission's requirement that eligible telecommunications carriers (ETCs) verify a Lifeline subscriber's eligibility for Lifeline service before activating such service, pursuant to the authority delegated in the Lifeline Reform Order.

2. Despite the directives provided in the Lifeline Reform Order, some ETCs may be activating phones that they represent enable use of Lifeline-supported service for consumers prior to fully verifying the eligibility of such consumers. For this reason, the Bureau reminds ETCs that they must verify the eligibility of a low-income consumer prior to providing Lifeline service to that consumer, and may not provide an activated device intended to enable access to Lifeline service to a consumer until that consumer's eligibility is fully verified and all other necessary enrollment steps are completed. We take this action in pursuit of the Commission's goal to combat any and all forms of waste, fraud, and abuse.

## **II. DISCUSSION**

3. In the Lifeline Reform Order, the Commission adopted several rules to ensure the eligibility of low-income consumers for Lifeline service. Specifically, the Commission promulgated § 54.410(a), which requires ETCs to "implement policies and procedures for

ensuring that their Lifeline subscribers are eligible to receive Lifeline services.” Similarly, § 54.416(a)(1) requires an officer of each ETC to “certify that the carrier has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services.” As discussed below, these rules, read in conjunction with the Lifeline Reform Order and other Commission rules, make clear that the ETC must determine whether a Lifeline subscriber is eligible to receive Lifeline service, and that the ETC must have processes and policies in place to make the eligibility determination prior to activating service for that consumer.

4. Section 54.410(b) and (c) of the Commission’s rules makes clear that ETCs must make this eligibility determination for “prospective subscriber[s].” To give meaning to the distinct term “Lifeline subscribers” in § 54.410(a), “prospective subscriber[s]” in § 54.410(b) and (c) must be understood to require an ETC to determine eligibility for consumers that have not yet had Lifeline service activated, but are merely seeking to do so by enrolling in the ETC’s Lifeline offering. Similarly, when an ETC holds itself out as offering Lifeline service, as required by § 54.405(c), a subscriber seeking to enroll in Lifeline service with that ETC would reasonably consider him/herself to be a “Lifeline subscriber” from the moment that, for example, the certification form is completed and the handset is activated for voice telephony service.

5. The framework for determining eligibility and enrolling consumers adopted in the Lifeline Reform Order also demonstrates that an ETC must determine eligibility before service activation. The Commission stated in the Lifeline Reform Order that ETCs must make the required determination of eligibility “prior to enrolling a new subscriber in Lifeline.” The enrollment process involves consumers signing up for service and making the required certifications via a certification form. Prior Commission forbearance conditions, which formed part of the basis for the enrollment rules adopted in the Lifeline Reform Order, prohibited ETCs from activating service before obtaining the required consumer certifications. Against that backdrop, the Lifeline Reform Order should be understood as imposing on all ETCs the

requirement that they may not activate Lifeline service until completing the entire enrollment process. Because the determination of eligibility must be made before the enrollment process is completed, it also must occur before the ETC may activate any phone that the ETC indicates will be used for Lifeline service. We also take this opportunity to reiterate the Commission's rule that Lifeline is a "non-transferable retail service offering," a fact that must be disclosed to the consumer and included on the certification form. We note that, pursuant to the Lifeline Reform Order, a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

6. Pursuant to §§ 54.410(a) and 54.416(a)(1) of the Commission's rules, an ETC must have processes and policies in place to make the eligibility determination prior to activating Lifeline service for a consumer. An ETC therefore may not provide a service that it represents to be Lifeline service, even on an interim basis while the consumer's application is being processed, before verifying eligibility. And in particular, an ETC may not provide an activated handset to a consumer whose eligibility has not been fully verified.

7. Pursuant to the authority delegated to the Bureau in paragraph 507 of the Lifeline Reform Order, we codify the requirement described above by amending § 54.410(a) of the Commission's.

### **III. PROCEDURAL MATTERS**

#### **A. Paperwork Reduction Act**

8. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

## **B. Final Regulatory Flexibility Certification**

9. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

10. Underscoring these compliance requirements does not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the Lifeline Reform Order. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to SBREFA. In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.

## **C. Congressional Review Act**

11. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

## **IV. ORDERING CLAUSES**

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5(c), 10, 201 through 206, 214, 218 through 220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act

of 1996, 47 U.S.C. 151, 152, 154(i), 155(c), 160, 201 through 206, 214, 218 through 220, 251, 252, 254, 256, 303(r), 332, 403, 1302, §§ 0.91, 0.291, 1.1, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.291, 1.1, 1.427, and the delegation of authority in paragraph 507 of FCC 12-11, this Order is ADOPTED.

13. IT IS FURTHER ORDERED that part 54 of the Commission's rules, 47 CFR part 54, IS AMENDED as set forth below, and such rule amendments shall be effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR part 54**

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Amy Bender,  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau.

## Final rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

### **PART 54 – UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.410 by revising paragraph (a) to read as follows:

#### **§ 54.410 Subscriber eligibility determination and certification.**

(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. An eligible telecommunications carrier may not provide a consumer with an activated device that it represents enables use of Lifeline-supported service, nor may it activate service that it represents to be Lifeline service, unless and until it has:

- (1) Confirmed that the consumer is a qualifying low-income consumer pursuant to § 54.409, and;
- (2) Completed the eligibility determination and certification required by this section and §§ 54.404 through 54.405, and completed any other necessary enrollment steps.

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